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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5613-N-06]

Privacy Act of 1974; Notice of a New System of Records, Office of General Counsel E-

Discovery Management System

AGENCY: Office of the Chief Information Officer

ACTION: Notification of New Privacy Act System of Records, E- Discovery Management System

SUMMARY: Pursuant to the provision of the Privacy Act of 1974, as amended (5 U.S.C. § 552a), the Department of Housing and Urban Development (HUD) is providing notice of its intent to establish a new system of records for the Office of General Counsel (OGC) E-Discovery Management System (EDMS). The OGC discovery productions typically require the preservation, collection and analysis of massive e-mails, word processing documents, PDF files, spreadsheets, presentations, database entries, and other documents in a variety of electronic file formats, as well as paper records. EDMS is expected to improve significantly the efficiency of OGC's processing of records during the discovery and processing of litigation requests and will dramatically reduce the time spent on the document review and production process. The Department will be issuing a Final Rule on the exemptions elsewhere in the Federal Register concurrent with the publishing of this updated System of Records Notice.

DATES: EFFECTIVE DATE: This proposal shall become effective, without further notice, **[Insert 30 days upon publication of this notice in the Federal Register]**, unless comments are received during or before this period which would result in a contrary determination.

Comments Due Date: **[Insert 30 days upon publication of this notice in the Federal Register]**.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 10276, Washington, DC 20410-3000.

Communications should refer to the above docket number and title. FAX comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8:00 am and 5:00 pm weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Inquiries pertaining to Privacy Act records, contact Donna Robinson-Staton, Chief Privacy Officer, telephone number (202) 402-8073, 451 Seventh Street SW, Washington, DC 20410 (Attention: Capitol View Building, 4th Floor) [The above telephone numbers are not toll free numbers.] A telecommunications device for hearing- and speech-impaired persons (TTY) is available by calling the Federal Information Relay Service's toll-free telephone number (800) 877-8339.

SUPPLEMENTARY INFORMATION:

Pursuant to the Privacy Act of 1974 (5 U.S.C. § 552a), Pursuant to the Privacy Act of 1974 (5 U.S.C. § 552a), as amended, notice is given that HUD proposes to establish a new system of records identified as the Office of General Counsel E-Discovery Management System notice. The system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Government Reform pursuant to Paragraph 4c of Appendix I to OMB Circular No. A-130, "Federal Agencies Responsibilities for Maintaining Records About Individuals," July 25, 1994 (59 FR 37914).

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

June 27, 2012

Dated

Kevin R. Cooke
Deputy Chief Information Officer.

[Docket No. FR-5613-N-6]

OGC.CAGC.01

SYSTEM NAME: Office General Counsel Electronic Discovery Management System.

SYSTEM LOCATIONS: The Electronic Discovery Management System (EDMS) application will be stored on servers located at 4701 Forbes Boulevard, Lanham, MD 20706 and on HUD workstations at 451 Seventh Street SW, Washington, DC 20410. Custodian data to be retrieved is stored on servers and HUD Field Office workstations located throughout the country. (See also on HUD's privacy website, Appendix II for the addresses of the Field Offices where Privacy Act records may in some cases be maintained or accessed).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM: The federal regulation(s)/statute(s) that gives OGC the authority to collect and store this information is Federal Rules of Civil Procedure (FRCP) 16(b) which allows the court to establish rules around disclosure, privilege, methods and work product prior to electronic discovery commencing. In this context, disclosure is the collection of data. Other relevant regulations surrounding the collection and management of electronic discovery are FRCP 26(f), 26(b)(2), 26(b)(5)(B), 33(d), 34(a), 34(b), 37(f), and 45.

PURPOSES: The Office of General Counsel (OGC) Electronic Discovery Management System (EDMS) provides OGC with a method to initiate, track, and manage the collection, organization, and production of paper and electronic documents for discovery requests, such as litigation hold memoranda, E-Discovery certifications, ESI search requests, closure letters, and any other documents and data relevant to the discovery process requiring analysis, review, redaction, and production to respond to litigation discovery requirements. The purpose of this system is to assist HUD to collect electronically stored information and data of any individual who is, or will be, in litigation with the Department, as well as the attorneys representing the

plaintiff(s) and defendant(s) in response to claims by employees, former employees, and other individuals; to assist in the settlement of claims against the government; to represent HUD during litigation, and to maintain internal statistics. A new software component is being added to HUD's EDMS process that will streamline the collection, storage, and analysis of case data in response to HUD requests. On December 1, 2006, the Federal Rules of Civil Procedure (FRCP) were amended to create and clarify responsibility for preserving and accessing electronically stored information (ESI). The obligation to preserve ESI, as well as paper records, begins when an individual "reasonably anticipates" litigation and concludes that the evidence may be relevant to such future litigation. Once an individual reasonably anticipates litigation, he/she must suspend any document alteration or destruction to ensure the preservation of relevant documents and electronically stored information, including emails. EDMS and its various capabilities will allow OGC to streamline and automate the document and data reviews it conducts, allow the attorneys to analyze the information in different formats, conduct the analysis in bulk more efficiently, and to protect unwarranted disclosure of information by flagging files that contain information therein that is protected from disclosure.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include: (1) All persons subject to a litigation hold due to a "reasonable anticipation of litigation" as determined by HUD/HUD's Office of General Counsel; (2) All persons deemed a participant of past or present litigation, investigations, or arbitration where the Department of HUD is involved; (3) Specified parties in litigation and cases in Department of HUD – Office of General Counsel.

Individuals covered by the system include individuals who either file administrative complaints with HUD or are the subject administrative complaints initiated by HUD, individuals who are

named parties in cases in which HUD believes it will or may become involved, matters within the jurisdiction of the Department either as plaintiffs or as defendants in both civil and criminal matters, witnesses, and to the extent not covered by any other system, tort and property claimants who have filed claims against the Government and individuals who are subject of an action requiring approval or action by a HUD official, such as appeals, actions, training, awards, promotions, selections, grievances and delegations, including the OGC attorneys to whom cases are assigned, and attorneys and authorized representatives for whom HUD has received complaints regarding their practices before HUD.

CATEGORIES OF RECORDS IN THE SYSTEM: Categories of records in this system include: (1) Custodian name; (2) Custodian work address; (3) Custodian e-mail address, (4) Case Name; (5) Case number; (6) Custodian e-mail data, including messages among other HUD employees and/or personnel of other federal agencies or outside entities, and attachments ; (7) Custodian local/shared drive data of information collected or compiled from law enforcement or other agency databases; (8) Spreadsheets including data collections, often including PII and sensitive law enforcement data used to track the process or investigations or focus investigative priorities; including records relating to litigation by or against the U.S. Government (or litigation in which the U.S. Government is not a party, but has an interest) resulting from questions concerning HUD cases and legal actions that the Department either is involved in or in which it believes it will or may become involved; claims by or against the Government, other than litigation cases, arising from a transaction with HUD, and documents related thereto, including demographic information, vouchers, witness statements, legal decisions, and related material pertaining to such claims; investigation reports; legal authority; legal opinions and memoranda; criminal actions; criminal conviction records; claims and records regarding discrimination,

including employment and sex discrimination; claims and records regarding the Rehabilitation Act; claims against non-HUD attorneys and/or representatives who engage in unethical activities or exhibit unprofessional behavior; copies of petitions filed with HUD; personnel matters; contracts; foreclosures; actions against HUD officials; records relating to requests for HUD records other than requests under the Freedom of Information Act and the Privacy Act of 1974; testimonies of HUD employees in federal, state, local, or administrative criminal or civil litigation; documentary evidence; supporting documents including the legal and programmatic issues of the case, correspondence, legal opinions and memoranda and related records; State Bar grievance/discipline proceedings records; security clearance information; any type of legal document, including but not limited to complaints, summaries, affidavits, litigation reports, motions, subpoenas, and any other court filing or administrative filing or evidence; employee and former employee ethics question forms and responses; and court transcripts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. To a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the records pertain;
2. To the National Archives and Records Administration (NARA) for use in its records management inspections and its role as an Archivist;
3. To the Department of Justice (DOJ) when seeking legal advice for a HUD initiative or in response to DOJ's request for the information, after either HUD or DOJ determine that such information is relevant to DOJ's representatives of the United States or any other component in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the DOJ is a use

of the information contained in the records that is compatible with the purpose for which HUD collected the records. HUD on its own may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which HUD collected the records; or

to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought.

4. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation;
 5. To contractors, grantees, experts, consultants, and the agents thereof, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for HUD, when necessary to accomplish an agency function related to its system of records.
- Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to HUD officers and employees;
6. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure;

7. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena;
8. To a grand jury agent pursuant either to a federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court;
9. To appropriate agencies, entities, and persons when: a) HUD suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised; b) HUD has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by HUD or another agency or entity) that rely upon the compromised information; and c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm for purposes of facilitating responses and remediation efforts in the event of a data breach.

POLICIES FOR STORING, RETRIEVING, AND DISPOSING OF SYSTEM RECORDS

STORAGE: Data collected by the Office of General Counsel's E-Discovery Management System is stored electronically in a Storage Area Network/Network Attached. There are no manual records stored or maintained outside the system. Storage at a secure Lockheed Martin facility, and backed up via an Avamar Backup Storage system.

RETRIEVABILITY: Records will be retrieved by the (1) Custodian name; (2) Work address; (3) Custodian e-mail address; (4) Case name; (5) Case number; (6) Custodian e-mail data; (7) Custodian local drive data; (8) Custodian home/shared drive data; (9) Litigation Hold closures; (10) Litigation hold memoranda; (11) Litigation preservation notices; (12) Litigation hold reminder notices; (13) ESI identification e-mail notifications; (14) E-Discovery notifications data is only accessed by individually assigned legal counsel on a case by case basis.

SAFEGUARDS: Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who are authorized to access by appropriate security clearances and user ID/password permissions. Only assigned users with a need-to-know are allowed access, on a case-by-case basis after going through HUDs background investigation process.

RETENTION AND DISPOSAL: When OGC requests a case to be closed after authorization is received, the case and related electronic litigation data is purged electronically. Active case data is held indefinitely. Records Disposition Schedule 2 – Legal Records, 2225.6 REV-1, CHG-APPENDIX 2.

SYSTEM MANAGERS AND ADDRESSES: Office of General Counsel (OGC) Patrina Munson, Supervisory Management Information Specialist, Field Management and IT Division, 1250 Maryland Avenue, SW Suite 200, Washington, DC 20024.

NOTIFICATION AND RECORD ACCESS PROCEDURES: Individuals seeking to determine whether this system of records contains information about them, or those seeking access to such records, should address inquiries to Donna Staton-Robinson, Chief Privacy Officer, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4156,

Washington, DC 20410. (Attention: Capitol View Building, 4th Floor) Provide verification of your identity by providing two proofs of official identification. Your verification of identity must include your original signature and must be notarized.

CONTESTING RECORD PROCEDURES: Procedures for the amendment or correction of records and for applicants who want to appeal initial agency determination appear in 24 C.F.R. Part 16.

- (i) In relation to contesting contents of records, the Privacy Act Officer at HUD, 451 Seventh Street, SW., Room 4178, Washington, DC 20410; and,
- (ii) In relation to appeals of initial denials, HUD, Departmental Privacy Appeals Officer, Office of General Counsel, 451 Seventh Street, SW, Washington, DC 20410.

CONTESTING RECORD PROCEDURES: The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 C.F.R. Part 16. If additional information or assistance is needed, it may be obtained by contacting:

- (i) Contesting contents of records: U.S. Department of Housing and Urban Development, Chief Privacy Officer, 451 Seventh Street, SW, Washington, DC 20410;
- (ii) Appeals of initial HUD determinations: In relation to contesting contents of records, the HUD Departmental Privacy Appeals Officers, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410.

RECORD SOURCE CATEGORIES: Documents and records in this system originate from HUD and its components, courts, subpoenas, law enforcement agencies, other federal, state, and local agencies, inquiries and/or complaints from witnesses or members of the general public.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT: Yes. The Department will be issuing a Final Rule on the exemptions elsewhere in the Federal Register concurrent with the publishing of this updated System of Records Notice.

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